

PUBLIC UTILITY DISTRICT NO. 1 OF COWLITZ COUNTY
Cowlitz County, Washington
January 1, 1992 Through December 31, 1992

Schedule Of Findings

1. The Public Utility District (PUD) Should Consider Its Mechanics As Employees And Report Their Earnings To Appropriate State And Federal Agencies

The PUD has contracted for many years with Darwin Dean Mitchell to maintain the district's vehicles. We noted that Mr. Mitchell and three other individuals worked exclusively on the district's vehicles and used the PUD facilities and tools to maintain the fleet. The PUD did not deduct or pay normal payroll taxes on the compensation it paid for these services, nor did it report the compensation to the appropriate state and federal agencies.

In our opinion, these individuals do not meet the "independence" criteria of the statutes cited below, and should have been considered PUD employees and paid through the payroll system.

According to RCW 50.04.140, remuneration for services rendered by an individual is reportable employment unless and until it can be shown that the individual meets all three of the following tests of independence:

- . . . (1) (a) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his or her contract of service and in fact; and
- (b) Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the enterprises for which such service is performed; and
- (c) Such individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service. . . .

Internal Revenue Service (IRS), Circular E, Publication 15, also provides that if the employer "has the legal right to control the method and result of the service," the individual is an employee.

IRS, Publication 937, further provides that it does not matter that a written agreement may take a position that employment determination factors used by the IRS do not apply, if the facts indicate otherwise. If an employer improperly treats an employee as an independent contractor, the person responsible for the collection and payment of withholding taxes may be held personally liable for an amount equal to the taxes that should have been withheld.

District officials indicated that they were unaware of these legal requirements until

recently. Failing to properly recognize these individuals as employees exposes the district to possible liability for unanticipated unemployment claims, retirement payments, unpaid Federal Insurance Contributions Act (FICA) taxes, and withheld federal taxes.

We recommend the district report all the earnings of these individuals according to the requirements of state and federal laws. In addition, we recommend the district carefully screen potential contractors for independence measured against the criteria cited above before entering into future contracts.